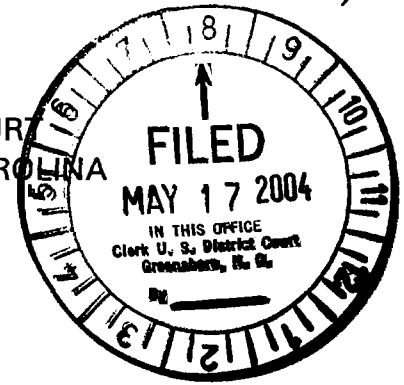


31.

D/LS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



MARILYN F. ASHWORTH

Plaintiff,

v.

CARILLON ASSISTED LIVING
OF ASHEBORO, LLC,

Defendant.

Case No. 1:02CV749

MEMORANDUM OPINION

TILLEY, District Judge.

Plaintiff Marilyn Ashworth filed suit on September 9, 2002, alleging racial discrimination and harassment by her former employer in violation of Title VII. The Defendant filed a Motion for Summary Judgment [Doc. # 12] on May 30, 2003. For the reasons set forth below, Defendant's Motion will be GRANTED.

I.

The facts, in the light most favorable to Ms. Ashworth, are as follows. Carillon Assisted Living of Asheboro, LLC ("Carillon") is an assisted living facility with a dedicated unit for patients with dementia ("Garden Place"). Carillon hired Ms. Ashworth on May 15, 2001, and promoted her to the position of Garden Place Coordinator on or about July 9, 2001. The new position had a three-month probationary period during which either party could terminate the employment

relationship without a notice period. At the end of the probationary period, Carillon would decide whether to offer Ms. Ashworth a permanent position.

On September 18, 2001, Ms. Ashworth planned to take a day trip with all fifteen Garden Place residents and their two primary caregivers. Shortly after driving away from the Carillon facility, Ms. Ashworth noticed that two of the residents had not been loaded in the van. Instead, the two residents had been left alone in the locked Garden Place unit. Ms. Ashworth spoke with her supervisor, who advised her that she would find other staff to watch the residents and that Ms. Ashworth should continue the trip. However, Carillon terminated Ms. Ashworth on September 20, 2001, citing the day trip incident and various other performance problems.

Ms. Ashworth filed a charge with the Equal Employment Opportunity Commission ("EEOC") on December 8, 2001, alleging that Carillon engaged in racial discrimination. The EEOC mailed a right-to-sue letter to Ms. Ashworth on June 4, 2002. Ms. Ashworth filed suit in this Court on September 9, 2002, alleging that Carillon subjected her to "race and color harassment by maintaining a hostile work environment . . . based on race, color, and discriminatory rates of pay" in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1).

II.

Summary judgment is proper only when, viewing the facts in the light most favorable to the non-moving party, there is no genuine issue of any material fact

and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Cox v. County of Prince William, 249 F.3d 295, 299 (4th Cir. 2001). An issue is genuine if a reasonable jury, based on the evidence, could find in favor of the non-moving party. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986); Cox, 249 F.3d at 299. The materiality of a fact depends on whether the existence of the fact could cause a jury to reach different outcomes. Anderson, 477 U.S. at 248; Cox, 249 F.3d at 299. In essence, the analysis concerns “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 251-52.

III.

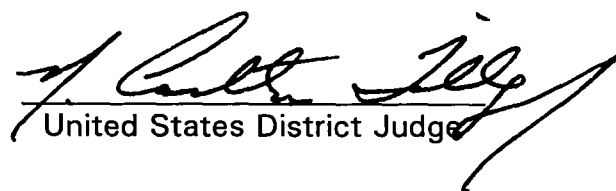
A plaintiff bringing suit under Title VII must file a complaint within ninety days of receiving an EEOC right-to-sue letter. 42 U.S.C. § 2000e-5(f)(1). In the absence of evidence of the date on which the right-to-sue letter was received, the Court will follow Federal Rule of Civil Procedure 6(e) and presume that the letter arrived three days after it was mailed. Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 148 n.1 (1984); Nguyen v. Inova Alexandria Hosp., 1999 U.S. App. LEXIS 17978 at *8 (4th Cir. 1999). A complaint that is not filed within the ninety-day period should be dismissed unless reasonable grounds exist for equitable tolling. Harvey v. New Bern Police Dep't, 813 F.2d 652 (4th Cir. 1987). The equitable tolling of a statutory time limit is only appropriate when “extraordinary

circumstances" beyond a party's control prevented her compliance with that time limit. Spencer v. Sutton, 239 F.3d 626, 630 (4th Cir. 001).

The EEOC right-to-sue letter in the instant case was mailed on June 4, 2002. Ms. Ashworth's Complaint was filed on September 9, 2002. Although the Complaint states that Ms. Ashworth did not receive the right-to-sue letter until June 10, 2002, Ms. Ashworth admitted in her deposition testimony that she did not remember the date on which she received the letter. Accordingly, this Court will apply the presumption that three days elapsed between the mailing and the receipt of the letter.

Assuming Ms. Ashworth received her right-to-sue letter on June 7, 2002, Ms. Ashworth filed her Complaint ninety-four days after receipt of the letter.¹ Because Ms. Ashworth did not file her Complaint within ninety days of receipt of her right-to-sue letter, and because there is no evidence of any grounds for an equitable tolling of the ninety-day period, the Complaint must be dismissed as a matter of law. The Defendant's Motion for Summary Judgment will be GRANTED.

This 17th day of May, 2004


United States District Judge

¹See Federal Rule of Civil Procedure 6(a) for details on computing time.